

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

WILLIAM L. SULLIVAN, #157 996	*
Plaintiff,	*
v.	* CIVIL ACTION NO. 2:05-CV-1033-D
	(WO)
SIDNEY WILLIAMS, <i>et al.</i> ,	*
Defendants.	*

RECOMMENDATION OF THE MAGISTRATE JUDGE

Plaintiff, William Sullivan, files this 42 U.S.C. § 1983 against the Alabama Board of Pardons and Paroles and several board members. He complains that Defendants committed several violations of his constitutional rights during his October 2003 parole hearing. Upon review of the complaint, the court concludes that Plaintiff's claims against the Alabama Board of Pardons and Paroles are subject to dismissal in accordance with the provisions of 28 U.S.C. § 1915(e)(2)(B).¹

DISCUSSION

The Alabama Board of Pardons and Paroles is not subject to suit or liability under § 1983. The Eleventh Amendment bars suit directly against a state or its agencies, regardless

¹A prisoner who is allowed to proceed *in forma pauperis* in this court will have his complaint screened in accordance with the provisions of 28 U.S.C. § 1915(e)(2)(B). This screening procedure requires the court to dismiss a prisoner's civil action prior to service of process if it determines that the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(i)-(iii).

of the nature of relief sought. *Papasan v. Allain*, 478 U.S. 265 (1986); *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89 (1984). Thus, Plaintiff's claims against the Alabama Board of Pardons and Paroles are "based on an indisputably meritless legal theory," and are, therefore, subject to dismissal as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i). *See Neitzke v. Williams*, 490 U.S. 319, 327 (1989).²

CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that:

1. Plaintiff claims against the Alabama Board of Pardons and Paroles be DISMISSED with prejudice prior to service of process under 28 U.S.C. § 1915(e)(2)(B)(i);
2. The Alabama Board of Pardons and Paroles be DISMISSED as a party to this cause of action; and
3. This case, with respect to Plaintiff's remaining claims against Sidney Williams, Nancy McCreary, Robert Longshore, and Caroline Minter be referred back to the undersigned for further proceedings.

It is further

ORDERED that the parties shall file any objections to the said Recommendation on or before **November 29, 2005**. Any objections filed must specifically identify the findings

²Although *Neitzke* interpreted the provisions of 28 U.S.C. § 1915(d), the predecessor to § 1915(e)(2), the analysis contained therein remains applicable to the directives contained in the present statute.

in the Magistrate Judge's Recommendation to which the party is objecting. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and advisements in the Magistrate Judge's Recommendation shall bar the party from a de novo determination by the District Court of issues covered in the Recommendation and shall bar the party from attacking on appeal factual findings in the Recommendation accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981, *en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done this 17th day of November 2005.

/s/ Delores R. Boyd
DELORES R. BOYD
UNITED STATES MAGISTRATE JUDGE

for

VANZETTA PENN MCPHERSON
UNITED STATES MAGISTRATE JUDGE